

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Amendment to the Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation

WT Docket No. 95-157
RM-8643

OPPOSITION OF UTAM, INC.

UTAM, Inc. hereby submits its Opposition to the Petitions for Reconsideration filed in the above-captioned docket.¹ As the frequency coordinator for unlicensed personal communications services ("UPCS"), UTAM is responsible for clearing microwave incumbents from the unlicensed spectrum so that the full range of UPCS products can be deployed.² In order to fund microwave relocations, UTAM charges a fee for the deployment of each UPCS device and will only relocate a link after it has sufficient funds to complete the relocation.

In its Order, the Commission adopted rules allowing microwave incumbents to self-relocate their systems rather than waiting to negotiate a relocation with a PCS provider. UTAM has several concerns regarding incumbent self-relocation, the most important of which is that there be sufficient incentives for incumbents to reduce costs to the minimum necessary to build a comparable system. However, the Commission adopted several safeguards to

¹ Three petitions for reconsideration were filed in response to the Commission's Second Report and Order, WT Docket No. 95-157 (rel. Feb. 27, 1997) ("Order").

² *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 10 FCC Rcd 7955 (1995) (Fourth Memorandum Opinion and Order).

prevent abuse of the self-relocation process, and UTAM believes that these measures are critically important to mitigate the risks associated with allowing incumbent self-relocation.

Several incumbents have filed petitions for reconsideration requesting that the Commission remove these safeguards or reduce their effectiveness in a number of respects.³ Without these safeguards, there will be no incentive for self-relocating incumbents to minimize relocation costs. Therefore, UTAM urges the Commission deny these petitions and maintain the important protections that it included in the rules.

I. REASONABLE RELOCATION COSTS ARE CRITICAL TO THE SUCCESS OF UPCS.

In its role as frequency coordinator, UTAM is responsible for financing and managing the relocation of the microwave links currently operating in the unlicensed band. Unlike licensed PCS systems, which can be deployed to at least some extent prior to the relocation of microwave incumbents, many unlicensed systems and devices such as nomadic products cannot be deployed at all until there is substantial or even total clearing of the unlicensed spectrum. Prior to completely clearing the UPCS band, UTAM is strictly controlling product deployment into the market to ensure non-interference with existing microwave incumbents. As detailed in the UTAM Plan for Financing and Managing 2 GHz Microwave Relocation,⁴ UTAM will

³ The following petitions were filed requesting reconsideration of the Commission's Order: American Petroleum Institute (filed Apr. 16, 1997) ("API Petition"), South Carolina Public Service Authority (filed Apr. 17, 1997) ("South Carolina Petition"), and UTC, The Telecommunications Association (filed Apr. 17, 1997) ("UTC Petition").

⁴ UTAM Plan for Financing and Managing 2 GHz Microwave Relocation, GEN Docket No. 90-314 (filed Aug. 1, 1994).

collect a fee on each deployment of coordinatable devices and use these funds to relocate links from the band. These fees account for UTAM's sole source of income.

Based on the Commission's estimate of link relocation costs, the number of incumbents in the UPCS band, and a study of coordinatable devices, UTAM has made careful, conservative estimates of the funds needed to relocate incumbents from the band and the coordination fees needed to raise this amount. If relocation costs increase substantially above these estimates, UTAM will be severely hampered in its relocation activities. This would occur if self-relocating incumbents, who will not take part in the PCS provider negotiation process designed to keep relocation costs at the minimum necessary to build a comparable system, are not otherwise constrained in their expenditures, or if new reimbursement rights are granted. Therefore, it is critical that the Commission not expand the class of microwave licensees entitled to reimbursement and ensure that there are as many safeguards as possible to prevent abuse of the self-relocation mechanism.

II. THE COMMISSION SHOULD NOT EXTEND REIMBURSEMENT RIGHTS TO ADDITIONAL INCUMBENTS.

API, UTC, and South Carolina have requested that the Commission allow any incumbent who self-relocated after April 5, 1995 to receive reimbursement through the cost sharing plan.⁵ UTAM believes that such a change in the rules would enable incumbents who are not entitled to reimbursement under the Commission's original rules to receive compensation. The Commission's rules state that incumbents who are displaced because of the deployment of PCS are entitled to compensation. But, any incumbent who has self-relocated

⁵ API Petition at 4-7; South Carolina Petition at 5-9; UTC Petition at 7-9.

prior to the Commission's adoption of this rule has not been forced to relocate because of PCS. The Commission's rules require that any PCS provider whose operations would cause interference to a microwave incumbent must compensate that incumbent with a comparable system.⁶ Rather, a self-relocating incumbent has relocated for reasons independent of PCS deployment. Allowing such incumbents to collect reimbursement would raise costs to UPCS and licensed PCS customers and give incumbents an undeserved windfall.

API states that, in the alternative, the Commission should allow incumbents who self-relocated after April 25, 1996, the date the Commission issued its Notice of Proposed Rulemaking, to receive compensation because they may have relied on the Commission's Notice and expected reimbursement.⁷ UTAM does not believe that any incumbent reasonably relied on the Commission's Notice in undertaking a self-relocation. Incumbents who have not been forced to relocate because of PCS are not entitled to any compensation and allowing them to receive compensation will endanger UTAM's relocation plan and increase the costs of UPCS devices and products.

III. SELF-RELOCATING INCUMBENTS SHOULD BE SUBJECT TO THE COST SHARING FORMULA.

Several incumbents urge the Commission to exempt self-relocation from the depreciation element in the cost sharing formula.⁸ The formula ensures that self-relocating incumbents pay at least some part of their relocation costs. As the Commission stated in its

⁶ 47 C.F.R. §§ 101.69-101.75.

⁷ API Petition at 7 n.3.

⁸ API Petition at 9-11; South Carolina Petition at 9-12; UTC Petition at 2-5.

Order, “depreciation creates an incentive for the relocater to minimize costs because its own share of the cost is not depreciated.”⁹ Although the depreciation amount for which a self-relocating incumbent will not be reimbursed may only be a small portion of the total relocation costs, it will give the incumbent at least some incentive to minimize costs. Moreover, the incumbent will be compensated for paying this small amount through the benefits of early relocation, including access to better spectrum.¹⁰

Since incumbents will not be required to negotiate with a PCS entity to determine appropriate relocation costs, having to pay a portion of their own relocation costs is the only real incentive incumbents will have not to upgrade their systems at the PCS consumers’ expense. In fact, paying this small portion of the costs will only ensure that incumbents do not waste resources, rather than ensuring that they build a comparable system. However, since this will be the primary incentive for self-relocating incumbents to conserve costs, it would be an invitation for abuse if the Commission were to remove it.

IV. INCUMBENTS SHOULD NOT BE PERMITTED TO SELF-RELOCATE TO LEASED FACILITIES.

One incumbent has also asked the Commission to allow self-relocating incumbents to receive reimbursement even if they acquire leased services rather than building a new microwave system.¹¹ In principle, UTAM has no objection to incumbents using leased capacity rather than building a new system. However, in the self-relocation context, UTAM is

⁹ Order, ¶ 27 (footnote omitted).

¹⁰ *Id.*

¹¹ API Petition at 7-9.

concerned that permitting incumbents to collect reimbursement without building a new system would diminish the value of the safeguards the Commission has enacted and make it easier for incumbents to abuse the system.

The Commission has required that self-relocating incumbents obtain an independent third-party estimate of the cost of a comparable system as a mechanism to ensure that a self-relocating incumbent does not overestimate the costs of relocation. However, if the incumbent acquires leased services instead of building a new system, the third-party estimate will be based solely on an appraisal of what the new system would have cost and would not include the actual cost or engineering data that would be obtained if the system had actually been relocated.¹² For example, a self-relocating incumbent will in some cases require only minimal new equipment if the incumbent's current equipment and towers can be utilized at higher frequencies. In such cases, the actual relocation costs will be small, but these savings may not become apparent to the independent third party preparing the estimate if no new system has actually been built. Moreover, if incumbents are not required to build a new system, some incumbents who choose to relocate for reasons independent of PCS deployment will find it easier to manipulate the self-relocation mechanism to obtain compensation to which they would not otherwise be entitled.

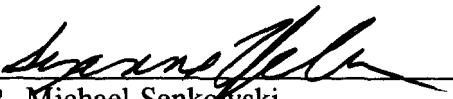
¹² API also suggests that incumbents self-relocating to leased services could be compensated based on a calculation of the net present value of the incumbent's lease through the sunset date. API Petition at 8 n.4. Under the Commission's rules, incumbents are entitled to a comparable system. Incumbents should not be allowed to use self-relocation as a way of gaining additional compensation. Such a policy would make relocation more expensive for UTAM and other PCS providers with no corresponding public benefit.

V. CONCLUSION

UTAM has developed a detailed financing plan which will allow it to fund efficiently the relocation of microwave incumbents from the UPCS spectrum. Self-relocation by incumbents creates opportunities to abuse the compensation system and raise relocation costs for UTAM and other PCS providers, which will have to be passed on to customers. Therefore, UTAM urges the Commission to deny the petitions for reconsideration and leave the self-relocation safeguards in place.

Respectfully submitted,

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May 20, 1997

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